

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA**

Carlos A. Dennison,

Plaintiff,

v.

J. Mark Hayes, Keith W. Powell, Jimmy
A. Richardson, John Gregory, Noel Smith,
Robert O'Donnell, Johnell Sparkman,

Defendants.

Case No. 2:21-cv-2877-RMG

ORDER AND OPINION

Before the Court is the Magistrate Judge's Report and Recommendation ("R & R") recommending that this action be summarily dismissed without issuance and service of process because Plaintiff fails to state a federal claim and supplemental jurisdiction of the state law claims should be denied. (Dkt. No. 14). Plaintiff did not file an objection to the R & R. For the reasons set forth below, the Court adopts the R & R as the Order of the Court.

I. Background

Plaintiff, a state prisoner, brings this action under 42 U.S.C. § 1983 alleging a violation of his Fourth and Fourteenth Amendment rights relating to his arrest by a Georgetown City police officers, Defendants Gregory and Smith, and against various individuals who were involved in his subsequent criminal trial, which resulted in Plaintiff's conviction on various drug charges and a sentence of ten years. Among the defendants sued by Plaintiff include two state judges, Defendants Hayes and O'Donnell; two prosecutors, Defendants Powell and Richardson; and witnesses at his criminal trial, Defendants Gregory, Smith, O'Donnell, and Sparkman. Plaintiff asserted claims for false arrest, malicious prosecution and violation of various state criminal statutes.

II. Standard

The Magistrate Judge’s Report is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Matthews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report to which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the Magistrate Judge’s recommendation, or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1). Objections to a Report and Recommendation must specifically identify portions of the Report and the basis for those objections. Fed. R. Civ. P. 72(b) “[I]n the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonia Life & Acc. Ins. Co.*, 416 F.3d 310, 316 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

III. Discussion

The Magistrate Judge recommended the summary dismissal of this action without issuance and service of process because the complaint and the subsequently filed amended complaint plainly fail to state a claim under federal law. The Magistrate Judge found that Plaintiff’s requested remedy, release from incarceration, was not available under § 1983, and the claims against the judges, prosecutors and witnesses were barred by judicial, prosecutorial or witness immunity. The Magistrate Judge further found the claims of false arrest and malicious prosecution were legally deficient as was the assertion of § 1983 claims arising out of alleged violations of state criminal

statutes. Finally, the Magistrate Judge recommended the Court not exercise its supplemental jurisdiction over any asseerted state law claims.

The Court finds that the Magistrate Judge ably analyzed the legal and factual issues in this matter and correctly concluded that the amended complaint should be dismissed without issuance or service of process. Therefore, the Court adopts the R & R (Dkt. No. 14) as the order of the Court. This case is dismissed without prejudice and without issuance or service of process.

s/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

January 5, 2023
Charleston, South Carolina